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Current Topics.

The Bar Library.

ALTHOUGH the Bar Library in the Law Courts has never sought to compete with the libraries of the four Inns of Court in any extensive provision of works outside the sphere of law, its immense utility has of late been more and more gratefully recognised, especially by those members of the two Inns whose libraries have, temporarily, had to be closed by reason of enemy action. Under the efficient care of Mr. RICHES, the very courteous and helpful librarian, the collection of legal treatises, as well as reports, is admirably maintained, and has, indeed, proved a boon for those temporarily deprived of the libraries of their Inns. Moreover, many of the volumes of reports have been carefully noted up, an highly important factor in the value of a law library. A pleasant story has come down to us of a bygone member of the Bar being seen by a friend going into one of the Courts with a bundle of books in his arms, whereupon the friend, being of a jocular turn, said: "Hullo, I thought you barristers all knew the law without such a mass of books"; a remark which evoked the convincing reply: "So we do; these books are for the judges!"

"Hansard."

THE First Report of the Select Committee on Publications and Debates, of which Sir FRANCIS FREMANTLE is chairman, refers to new arrangements which have been made with the object of overcoming previous delays in the printing and delivery of Official Reports of Parliamentary Debates. Evidence before the committee has been given by Sir WILLIAM CODLING, and the committee has been informed of certain new arrangements. These involved the acquisition of premises and plant. Suitable premises and plant had been found: the publication of *Hansard* to time had continued without interruption, and an improvement in the printing of other Parliamentary documents might be expected. Type faces of the customary size and character would be available at an early date, and the committee hoped that the arrangements would prove satisfactory. The great difficulties under which Sir WILLIAM CODLING, the staff of H.M. Stationery Office, and all concerned have been working are recognised by the committee, the members of which record their appreciation of the admirable way in which the work had been carried on in spite of great inconvenience and danger. The value of *Hansard*—particularly to those whose duty it is to follow proposed changes in the law—was perhaps never greater than at the present time, and we learn with satisfaction of the arrangements above indicated.

Air Raid Damage: Restoration Problems.

LORD REITH, the Minister of Works and Buildings, when recently discussing with the redevelopment committee of a city subjected to heavy bombardment from the air, made the interesting suggestion that that city would be a test case. He added that the Minister of Health and himself would arrange for a senior officer of the latter to be in the locality during the following week to examine the difficulties on the spot with the redevelopment committee and officers of the council. In reply to an inquiry from a deputation raising the question whether it would be necessary for the corporation to promote a Bill in Parliament, LORD REITH said that he anticipated there would be general legislation. He welcomed the corporation's proposal to envisage a redevelopment of a comprehensive rather than a patchwork nature. Another aspect of the problem, namely, that raised by the destruction of many fine churches, is dealt with by a recent writer to *The Times*, who describes himself as a younger member of the architectural profession. "During the last ten years"—he writes—"years through which, as architects, we have had to struggle against deep prejudices to get our new ideas of construction and design accepted—we have watched the formation of one preservation society after another. We have seen money raised and great efforts made all to the same end: 'The preservation of this or that.' While we have every sympathy with these societies, we feel that had half their energy been diverted from preserving the old to controlling and guiding the new, far greater benefit might have been derived." In the same writer's view the tragedy of modern development is not so much that it took place—that was inevitable—but that it was too often entrusted to those who cared little and understood less about the responsibilities of a designer working with new materials in what he describes as the sanctified surroundings of many of our ancient cities. Preservation alone is, he urges, a negative answer. A more positive outlook is required. What is needed to-day is no academic discussion as to whether the demolished churches should be rebuilt in one place or another, but a new approach to the whole problem of redevelopment, and with it a determination to produce something worthy of our generation. "Let us by all means," he concludes, "shed a tear for what has gone, but let us, like our predecessors, have the courage of our convictions and seize this opportunity to replan and rebuild our towns and cities without being afraid of trying new methods or risking a few experiments."

Shops "Fit" though Windowless.

A DECISION of the learned county court judge of Westminster County Court was reported in the press on 8th and 9th January last, in which His Honour held that certain West End shops which had lost their windows in air-raids, were not thereby rendered "unfit" within the meaning of the Landlord and Tenant (War Damage) Act, 1939. This must not be taken to be an authority for the proposition that leases of shops cannot in any circumstances be disclaimed under the Act merely because the windows have gone. The learned judge was much influenced by the cost of replacing the particular windows as compared with the value of the premises, reflected by their size and that of the rentals yielded. The statutory definition of "unfit," discussed in an article entitled "Minor Damage and the Landlord and Tenant (War Damage) Act, 1939," in our issue of 19th October, 1940 (84 SOL. J. 591), calls for consideration of "all circumstances," mentioning in particular purpose, class of tenant, and accommodation available. The importance of a window to a shop varies considerably with the kind and the class of trade carried on; in some cases the function is rather that of attracting customers than that of keeping the elements out. Even in the same trade the importance may vary: there are dressmakers who employ highly-paid "window-dressers,"

others who establish themselves in "*maisons fermées*"—the former, if their windows be broken, have to lay out large sums on plate-glass if they are to carry on; the latter, on finding their premises no longer literally "*fermées*," can adequately remedy the trouble with so much weatherboard.

Soldiers' Homes: Possession.

The Times recently published a statement made by Judge EARENGEY at the Clerkenwell County Court when giving a landlord possession of the home of a soldier who had said that he was making application to his commanding officer to get him out of his difficulties. His honour said: "We were told that arrangements had been made to help soldiers who were in need, but I have a number of cases in this court in which it is said that soldiers have applied to their commanding officers for assistance and, so far as appears from the evidence, no assistance is forthcoming. I do not know whether a statement in the newspapers that such assistance would be available was correct or not, but it is obvious to me that assistance is not readily furnished in respect of rent. The hope that they will get anything from the Army authorities seems in these circumstances somewhat illusory."

Compulsory Evacuation.

THE principle of compulsion has recently been applied to the evacuation of certain children in evacuation areas of Greater London. This has been effected by bringing into force in the areas concerned a defence regulation empowering a local authority to order the medical examination of any child under fourteen who, there is reason to suppose, "is suffering in mind or body as a result of hostile attacks, or is in such a state of health as to be likely so to suffer if he or she remains" in the evacuation area. Provision is made for a notice to be served in such cases upon the parent or guardian requiring him to submit the child for examination, which will be made by a doctor appointed, in the case of school children, by the local education authority and, in the case of children under school age, by the maternity and child welfare authority. If the doctor certifies that the child is suffering, or is likely to suffer, in the manner specified in the regulation, the authority is empowered to give directions for the removal of the child within a specified period of not less than seven days. The parent or guardian may within seven days appeal to a court of summary jurisdiction, and, if the appeal fails, he may ask the authority to make arrangements for the child's removal under the evacuation scheme. If a child whose removal has been directed remains in, or returns to, the area, the parent or guardian, and any person who brings into the area or harbours the child, will be guilty of an offence under the regulation. It will be a defence to the charge if the parent or guardian can prove that the child was in the area without his knowledge or consent, or if the parent or guardian or any person charged with harbouring can prove that the proper authority was requested to make arrangements for the removal of the child. According to a recent statement, it is expected that children alleged to be suffering or likely to suffer in body or mind as the result of air-raids will be brought to the notice of the local authority from several sources, such as schools and child welfare clinics, and by health visitors and welfare workers. Moreover, a regulation has recently been issued providing for the examination of children found in shelters, and it is the duty of the local authority to order the examination of any child in a shelter where the authority has reason to believe that the case comes within the terms of the regulation. The Minister of Health has expressed the hope that when a doctor has satisfied himself that a child ought to be removed, it may be possible to persuade the parent or guardian to agree to evacuation and it is not expected that local authorities will have to go to the length of issuing directions for removal except in the minority of cases. Facilities will be offered to any mother who wishes to go with her child, provided the child is suitable for billeting.

Billeting: Central Authorities.

IN our issue of the 11th January we referred to the position of the various kinds of local authorities concerned with billeting and to the suggestion made by a writer to *The Times* that county councils should be given greater powers than they at present possess in this matter. The question of central control has now been raised by a special correspondent to *The Times*. This writer alludes to the fierce competition for accommodation witnessed by him in a certain town between the "bombed billetable" (as those bombed out of their own homes are officially designated) and other refugees, war workers, the military, civil servants and business concerns. He recognises that recently, in the billeting for refugees, the Ministry of Health has achieved considerable improvement in many areas, and refers to the claim that, given energetic and sympathetic action in local areas, billeting can be carried out without undue hardship or inconvenience. But, he urges, this still leaves a vast field of interrelated problems where, for lack of wide and even autocratic powers in the hands of a well-informed central authority, comprehensive planning and co-ordination between several Government Departments there is confusion—and even chaos. "The problems raised by this uncontrolled scramble for accommodation," he writes, "go beyond the range of any one Ministry. They are concerned with food and other supplies, hospital accommodation, education, water supply, sewage disposal, coal, gas and electricity supply, and they entail much extra work for local government staffs, often seriously depleted. There is overwhelming need of a central authority to co-ordinate the heavy and conflicting demands on certain areas, with power to give priority in accordance with the national interest and to veto or divert movements which serve narrow and less important ends." The writer urges in conclusion that, unless this vast and many-sided problem is tackled quickly, the war effort will suffer serious harm.

Rules and Orders: Oversea Doctors.

ATTENTION should be briefly drawn to two orders which have recently been made under the Defence Regulations in view of the increasing demands on the services of doctors for war purposes. The orders authorise the General Medical Council to include oversea doctors temporarily in the Medical Register under certain conditions. The first order, the object of which is to facilitate the employment of those concerned in the emergency medical service, applies only to doctors who are qualified to practise in Canada or the United States and are of British nationality or United States citizens. The second order applies to doctors qualified to practise in any part of the British Empire or in the countries of our European allies, or in Germany or Italy. The doctor must be selected either for a medical commission in one of the fighting forces or for employment in a hospital, institution, or service, not involving attendance in the patient's own home, approved by the Minister of Health in England or by the appropriate Secretary of State in Scotland or Northern Ireland. The main objects of this order are stated to be (1) to facilitate the employment of medical officers in the Allied Forces in the United Kingdom by giving them the privileges of registered medical practitioners, and (2) to facilitate the employment of Dominion and foreign doctors in civil hospitals by giving them the same privileges. These orders do not affect the operation of the Aliens Acts and Orders.

Recent Decisions.

In *Re Diplock; Wintle and Others* v. *Diplock and Others* (*The Times*, 16th January), the Court of Appeal (Sir WILFRID GREENE, M.R., and CLAUSON and GODDARD, L.JJ.) reversed a decision of FARWELL, J. (84 SOL. J. 524) and held that a gift by a testator of residue in favour of "such charitable institution or institutions or other charitable or benevolent object or objects in England as my acting executor or executors may in his or their absolute discretion select" was not a charitable trust, and that the testator's residue was undisposed of and devolved as on an intestacy. Leave was given to appeal to the House of Lords.

In *The San Demetrio* (*The Times*, 18th January) LANGTON, J., sitting with the Trinity Masters, awarded sums totalling £14,700 in respect of the salvage of the defendants' motor vessel *San Demetrio* and her cargo and freight, valued at £300,000. The vessel had been attacked on 5th November, 1940, by the armed raider which sank the escorting auxiliary cruiser *Jervis Bay*. Remarkable courage and resource were displayed by the plaintiffs whose costs in the action were guaranteed by the defendants.

In *White* v. *Hurrells Stores, Ltd.* (*The Times*, 20th January), a Divisional Court (HUMPHREYS and OLIVER, JJ.) remitted to the magistrates, with a direction to convict, a case in which the defendants had been charged with unlawfully selling rationed food without having in their possession or receiving a ration book, coupon or other document available for lawful use in respect of the sale, contrary to para. 8 of the Rationing Order, 1939. The justices, being of opinion that the offence was of a trivial nature, had dismissed the information under s. 1 (1) of the Probation of Offenders Act, 1907.

In *Re Sabini* (*The Times*, 21st January) the court (LORD CALDECOTE, C.J., and HUMPHREYS and TUCKER, JJ.) refused an application for a writ of *habeas corpus* by one who was born in England of an Italian father. The court intimated that it was sufficient to justify a finding that a person was of hostile origin if his origin was of a nation which at the time when the question fell to be determined was hostile to this country.

Criminal Law and Practice.

Solicitors' Right of Audience in Quarter Sessions.

A PECULIAR situation arose at Cumberland Quarter Sessions at Carlisle on 7th January, when a prisoner who applied for a dock brief found that the only barrister in court was the barrister who was prosecuting him. There were however several solicitors in court.

The court dealt with the situation by holding that in the absence of barristers a solicitor could not only defend, but could accept instructions from the dock. A solicitor was accordingly permitted to take instructions.

Before the Summary Jurisdiction Act, 1848, s. 12, gave attorneys a right of audience in petty sessions, it was held (in *Collier* v. *Hicks* (1831), 2 B. & Ad. 663) that in an action by an attorney against two justices for trespass, for assaulting and turning the plaintiff out of a police office, that it was a good plea to allege that the plaintiff insisted on remaining as an advocate for an informer under a penal statute and that the justices had ordered him out of the court, and that when he would not go, they had him ejected. It was held that the magistrates had on the hearing of an information a discretionary power to regulate their own proceedings and to decide who should appear as advocates and even to hear no one but the parties before them. This, however, is no longer the law as regards petty sessions.

In *Reg.* v. *Griffiths and Williams* (1886), 54 L.T. 280, Pollock, B., went further, and said that he had no doubt that not only under the Summary Jurisdiction Acts, but also by the common law, prisoners had a right to be represented by solicitors at preliminary inquiries before justices.

In the course of his judgment in *Collier* v. *Hicks*, *supra*, Lord Tenterden, C.J., said, with regard to a solicitor's right of audience in quarter sessions: "So at the quarter sessions, the justices usually require that gentlemen of the bar only should appear as advocates; but in remote places, where they do not attend, members of the other branch of the profession are permitted to act as advocates."

In 1846 the justices in quarter session for Denbighshire made an order "that the request of the barristers for exclusive audience be granted at all times when four barristers are present." The Solicitor-General, Sir Francis Kelly, moved on behalf of Thomas Evans, an attorney practising in the town of Denbigh, for a *certiorari* to bring up the order for the purpose of having it quashed (*R.* v. *Denbighshire Justices, ex parte Evans* (1846), 9 Q.B.279). The affidavit in support of the application stated that previously to the making of the order no barristers had practised in any court of quarter sessions in the county except upon special retainer and attorneys had at all times audience in those courts.

The Solicitor-General referred to the general observations in *Collier* v. *Hicks*, *supra*, concerning the power of a court to regulate its own proceedings except where they are already regulated by ancient usage. He argued that in Denbighshire the courts of quarter sessions came within the exception. Lord Denman, C.J., however, held that the justices had exercised their discretion soundly in making the order, and that the exception did not touch the present case, but only those in which, by usage, some privilege is given to particular persons exclusively.

On 5th January, 1889, as recorded in the issue of *The Law Journal* for the following week, a solicitor named Holloway Bott applied to the Recorder at Oswestry Quarter Sessions for permission to defend a prisoner on the ground that there were less than four counsel present. He argued that *Ex parte Evans*, *supra*, made four barristers the essential minimum to give the bar a right of exclusive audience. The Recorder, quite rightly, referred to the rules of his own court and found that there was no such limitation, and held, also correctly, that each court was bound by its own rules and no other rules on this question. He reserved his right to decide his course of action where only one barrister attended, as no provision was made against that contingency in the rules of his own court.

It is not a rare occurrence even in courts of quarter sessions frequented by the bar for the bar occasionally to fail in attendance. At present such occasions are likely to increase in number, with the increasing calls on the man-power of the country to take a direct part in the national effort. It is as well therefore to remember that, so far as quarter sessions is concerned at any rate, there is a reserve of experienced solicitors in most cases in the immediate locality who are ready and willing to take up practice as advocates in quarter sessions, which no doubt will regulate their proceedings accordingly in the temporary absence of the bar on more urgent duties.

Mr. Reginald Kemp, J.P., West Middlesex coroner, has retired after forty-two years' service. He has conducted 10,000 inquests.

Finance Regulations.

Consolidation and Amendments—VII.

Compulsory Acquisition of Foreign Securities.

The power of the Treasury to acquire compulsorily foreign securities has been previously discussed in some detail (84 SOL. J. 663). It is of some interest to note here that a further exercise of this power has been made by the issue of the Acquisition of Securities (No. 7) Order, 1940 (S.R. & O., No. 2114), which came into operation on the 14th December, 1940. The securities thereunder acquired are American ones, concerning which returns had previously been made under the Securities (Restrictions and Returns) Order, 1939 (S.R. & O., No. 966), or under the Securities (Restrictions and Returns) (No. 2) Order, 1940 (S.R. & O., No. 1590). These securities and the prices at which they are to be acquired are set out in the schedule to the order. If the securities in question happen to be ones in respect of which a certificate of exemption under reg. 5A (1) has been granted they do not come within the ambit of this order. Neither do they if they have been sold, with the permission of the Treasury, to a person not resident in the United Kingdom, the Isle of Man or the Channel Islands.

The Issue of New Shares.

Some slight changes have been made in the law relating to this matter by the Capital Issues Exemptions Order, 1940 (S.R. & O., No. 2187), dated the 27th December, 1940. The position of the law before this order was as described at 84 SOL. J. 351 and 676. The new order, which revokes the Capital Issues Exemptions (No. 3) Order, 1939 (S.R. & O., No. 1621), is in practically identical terms to the revoked order. The list of operations exempted from the restrictions imposed by the order is enlarged a little. Among these exempted operations will now be found the issue of securities on the acquisition by one company of the control of another company so long as no subscription of new money is involved. The issue of a security to a government department or to a person authorised on behalf of such a department is exempt, as also are agreements creating a personal liability, on the part of the owner of property subject to a mortgage or charge, to pay to the person entitled to the benefit thereof any sums thereby secured, but not otherwise affecting the mortgage or charge.

Restriction on Payments.

Several further countries have been brought into the scheme by which payments to and from foreign countries are controlled. The method of transferring a credit in one account to another account in order to satisfy a debt without sterling being actually sent out of the country seems to be growing in importance. Owing to minor amendments grafted on to the original scheme and to the introduction of Treasury special accounts, sterling area accounts and registered accounts, the operation of the scheme, as it is applied to different countries, seems at first sight somewhat obscure. On analysis, however, it will be found that there are three sub-divisions of this "set-off" type of transaction.

In its original form, of which para. 2 (*b*) of the Regulation of Payments (Argentine Republic) Order, 1940 (S.R. & O., No. 1258), is typical, the permitted method of payment was a transfer of a credit in an account with a bank in the United Kingdom or the Isle of Man belonging to a person resident in the country in question to a similar account of *another* person resident in the same country. These transfers were only permissible when the accounts concerned were not Treasury special accounts, if such existed for the country in question. This is the method as described at 84 SOL. J. 507.

Under recent modifications the procedure falls into one of the three following classes:—

(i) The transfer may be made from an account so long as it is not a Treasury special account, a sterling area account or a registered account if such exist for the particular country, in a bank in the United Kingdom or the Isle of Man belonging to a person resident in the country in question. The transfer may be made to a similar account belonging to the *same or to another* person resident in that country and may consist of the whole or any part of the money in the first account. This is method 2, as described at 84 SOL. J. 556. It is available in the cases of the Belgian Congo and Ruanda-Urundi (S.R. & O., No. 1577); Canada and Newfoundland (S.R. & O., No. 1866); the Dutch East and West Indies (S.R. & O., No. 1580); Roumania (S.R. & O., No. 1581); Sweden (S.R. & O., No. 1582); Switzerland (S.R. & O., No. 1583); and the U.S.A. (S.R. & O., No. 1867).

(ii) In other cases transfers under the same conditions as in (i) above may be made, but in addition a transfer may be made to a sterling area account belonging to the *same* person from whose account the transfer is made. This

is method 2A, described at 84 SOL. J. 556. Such transfers may be made in the case of the Argentine Republic (S.R. & O., No. 1576); Brazil (S.R. & O., No. 1578); the Portuguese Empire (S.R. & O., No. 1585); Peru (S.R. & O., No. 1588); Uruguay (S.R. & O., No. 1636); Bolivia (S.R. & O., No. 1779); Greece (S.R. & O., No. 1868); Chile (S.R. & O., No. 1959); Hungary (S.R. & O., No. 1944); and Paraguay (S.R. & O., No. 2173).

(iii) In two recent cases a new type of transfer has been allowed. It is a transfer from an account, not being a Treasury special account, in a bank in the United Kingdom or the Isle of Man belonging to a person resident in the country in question to a similar account belonging to the *same or another* person resident in that country. It is thus the original form of transfer extended somewhat so as to include a transfer to another account of the transferor. This method, which might be numbered 2B, applies in the case of Turkey (S.R. & O., No. 2051) and Spain and its territories (S.R. & O., No. 2080).

Three more countries have recently been brought into this general scheme. This was done in the usual way by the Regulation of Payments (General Exemptions) (No. 6, No. 7, and No. 8) Orders, 1940 (S.R. & O., Nos. 2050, 2079 and 2172), and by the Regulation of Payments (Turkey) Order, 1940 (S.R. & O., No. 2051), the Regulation of Payments (Spain) Order, 1940 (S.R. & O., No. 2080), and the Regulation of Payments (Paraguay) Order, 1940 (S.R. & O., No. 2173), coming into force on the 5th December, the 9th December and the 30th December, 1940, respectively. The order relating to Spain applies to the peninsular territories of the Spanish State, the Canary Isles, the Balearic Isles, Ceuta and Melilla, the Spanish Zone of Morocco and the Spanish Colonies. In the cases covered by these three orders—Turkey, Spain and Paraguay—payments may be made to Treasury special accounts, or to sterling area accounts; payments may also be made by the transfer of the whole or part of the credit in a Treasury special account to another Treasury special account, or to a sterling area account, i.e., by the methods numbered 1, 1A and 8 in previous descriptions of this procedure (84 SOL. J. 556). It is also possible to make payments by the set-off type of transaction as above described. In the case of Turkey and Spain payments may be made by means by the arrangements under the Clearing Office (Turkey) (No. 2) Order, 1936 (S.R. & O., No. 1251), as amended by the Clearing Office (Turkey) Amendment No. 2 Order, 1940 (S.R. & O., No. 208), and under the Clearing Office (Spain) Order, 1936 (S.R. & O., No. 2) as amended by the Clearing Office (Spain) Amendment Order, 1940 (S.R. & O., No. 456) respectively. As regards payment for goods exported to these three countries it is to be made in sterling obtained from an appropriate Treasury special account. In the cases of Turkey and Spain it may also be made through the offices opened for the purposes of the agreements made between Great Britain and Turkey on the 3rd February, 1940, and between Great Britain and Spain on the 18th March, 1940.

A Conveyancer's Diary.

The Land Charges (No. 2) Rules, 1940.

IT will be recollected that in our issue of 14th December, I discussed the Land Charges Rules, 1940, and called attention to a slip in drafting which appeared to render the whole system of priority notices unworkable. The article concluded by pointing out that further rules were imperative for extending the period referred to in s. 4 (1) (*b*) of the Law of Property Amendment Act, 1926, from fourteen days to, say, twenty-one days.

It now appears that on 20th December the Lord Chancellor made the Land Charges (No. 2) Rules, 1940, to come into force forthwith. The only operative part of these rules is r. 1, which extends the period fixed by s. 4 (1) (*b*) from fourteen to twenty-eight days.

The consequence is that from 20th December the system of priority notices has again become capable of functioning, though at the much slower pace made necessary by the present state of the posts and the evacuation of H.M. Land Registry. The new rules are printed in our issue of 11th January, 1941, at p. 23.

1940 Chancery.—II.

IN *Re Clayton* [1940] Ch. 539, and in *Kay* v. *Lovell* [1940] Ch. 650, the court considered the power which it has, under the Solicitors Act, 1932, s. 69, to make charging orders in favour of solicitors. The section reads as follows: "Any court in which a solicitor has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the solicitor entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs or for raising money to pay, or for paying, the said costs out of the said property." On p. 2371 of the "Annual Practice" for 1940 there is a note on the section, as follows: "Extent of:—This statutory power given to the court in aid of the common law right (see *Re Born* [1900] 2 Ch. 433), unlike the lien upon papers, is confined to the costs, charges and expenses incurred in respect of the particular 'property recovered or preserved' . . .; it is not a general charge for all costs," and various cases are cited.

Re Clayton was an administration action in which the plaintiff was a Mrs. Collins, a creditor. The administrators were the defendants, and A and B were their solicitors. A and B (whom we shall call "the applicants") had acted for the administrators as vendors upon a sale of part of the estate, the proceeds of which were in court. There was a stop upon the fund in favour of the income tax authorities. The applicants, having been paid no costs of the action, brought this summons for a declaration that, despite the stop, it might be declared that they were entitled to a charge on the fund in court for the amount of their costs of the action (not only their costs in relation to the property whose sale had produced the fund), and for consequential orders for taxation and payment of their costs out of the fund. Morton, J., said that there *was* jurisdiction to make such an order, and that the note in the "Annual Practice" was "not quite accurate," the statutory power being wider than was stated in the note. But he came to the conclusion that as a matter of principle "the solicitor is to be rewarded for his efforts to the extent of receiving the costs, charges and expenses properly incurred in preserving the property" (p. 546) and that the power should not normally be exercised further or otherwise. In coming to this decision he relied on remarks of Chitty, J., in *Greer* v. *Young*, 24 Ch. D. 545, and of Brett, M.R., and Bowen, L.J., in the same case which indicate in effect that "the solicitor is treated as a salvor who has recovered or preserved something in time of danger by his work or labour. Into whatever hands it may fall it is charged with the salvage," although it was conceded that the analogy of salvage was by no means perfect. The learned judge therefore limited his order to the costs, etc., properly incurred in recovering or preserving the fund in court. He declined to express any opinion on the question whether this charge should have priority over the revenue's stop, since the point was academic, there being ample money for both. But it seems that, if the passage quoted above from *Greer* v. *Young* is to be taken as a correct statement of the law, the salvor would pretty clearly take precedence over the revenue, since, in the absence of his efforts (for which he ought to be paid) there would have been nothing for the revenue to take. Such is the position in the class of case to which *Re Clayton* belonged, viz., creditors' administration actions.

In the meantime there was in progress a partnership action called *Kay* v. *Lovell* [1940] Ch. 650, started in 1938, in the course of which a large fund had been collected in court. The applicants were the solicitors for the plaintiff, and in March and November, 1939, the master had made charging orders upon it in their favour for all their costs down to the date of each order. A week or two after the decision in *Re Clayton* the applicants came for a further such order, but in view of *Re Clayton* the master doubted whether he could make the order and adjourned the application to Bennett, J. It was opposed by certain creditors of the partnership. Counsel for the applicants referred to the form of charging order in a partnership action in "Seton" (7th ed., vol. II, p. 1044), which is so framed as to cover all the costs and not only those of recovering a particular asset. The learned judge said that orders in this form had been usual in partnership actions for years and that he proposed to follow "Seton." He added that "in an administration action it may be appropriate to make a different form of order," as any of the parties may be concerned with matters quite other than the recovery or preservation of property. "That, however, does not seem to me to be so in the case of a partnership action."

These two cases taken together have not made the position entirely clear, but the principle which seems to emerge is that, while the court admittedly has power to make a charging order covering all the costs in any case, it will not do so in cases where there are other matters at issue than the recovery or preservation of property. But it seems possible that the apparently simple rule laid down in *Re Clayton* could not be applied in any administration action; *Re Clayton* was a very straightforward case as there was apparently only one fund in court, and it arose from the sale of a single asset. Had there been a single fund in court comprising the proceeds of several assets, as occurs in a partnership action, it would seem difficult to apply the rule.

The last of the cases of 1940 which is of special interest to solicitors as such is one not reported so far in the Law Reports. It was *Hesketh* v. *Nicholson* (84 Sol. J. 646; *The Times* Newspaper, 20th and 22nd January, 1940), which concerned the Public Authorities Protection Act, 1893 (now Limitation Act, 1939, s. 21). On 19th July, 1937, by the negligence of the Southwark Borough Council's servant (so the learned judge held), the plaintiff was knocked down by one of the council's lorries. The plaintiff, three months later, consulted the defendant, a solicitor. On the 11th October the defendant wrote to the council's insurance company to begin negotiations. These were spun out until the very day when the six months' period was about to expire, on which day the insurance company made an inadequate offer to the defendant, knowing full well that he would have to take instructions and that the period would certainly expire before an answer could be given. The plaintiff started an action against the council in which the latter pleaded the Public Authorities Protection Act. The plaintiff then abandoned that action and sued the unfortunate solicitor for negligence. Singleton, J., left no doubt of his opinion of the conduct of the insurance company, and, impliedly, of the council who had given it a free hand. He said it was "interesting" to find the Act being invoked not by persons acting in the execution of public or statutory duties, but by an insurance company covering the risks of such persons. Apart from this it was quite clear that the judge thought that the insurance company had behaved badly in the negotiations and all that the unhappy solicitor had done was to "think that he was dealing with people from whom he could expect equal terms." His lordship said that it was difficult to think that such a point would be taken when negotiations were going on. But the law is unfortunately quite clear; the report does not state what cases were cited to the learned judge, but *Fletcher* v. *Jubb* [1920] 1 K.B. 275 establishes that it is actionable negligence in a plaintiff's solicitor to allow the period prescribed by the Public Authorities Protection Act to expire while negotiations are in progress. There is, of course, a general principle that the running of time is not suspended by negotiations; this rule is not unreasonable where the period is twelve, six or even two years, but is unfortunate when applied to a very short period. One can, to be sure, enter into a contract not to plead the statute and recover damages for breach of such a contract (see *East India Co.* v. *Oditchorn Paul*, 7 Moo. P.C. 85; cf. *Waters* v. *Thanet*, 2 Q.B. 757). But such a contract would not readily be implied from the mere pendency of negotiations. The general rule applies to actions against "public authorities" (*Hewlett* v. *L.C.C.*, 72 J.P. 136). It was there intimated that a different result might have occurred if the prospective defendants had represented during the negotiations that they would not plead the Act, and the same idea seems to have been present in *Pearson* v. *Dublin Corporation* [1907] A.C. 351. But the only safe course for a solicitor who is negotiating with a "public authority" on behalf of a potential plaintiff is to see that the writ is issued in time. Otherwise he will face a charge of negligence and will have to pay damages. No doubt he will also have an insurance company who will pay up, but no solicitor can be expected to view charges of professional negligence with complacency, even if they are purely technical. The report in *The Times* shows that the judge spoke in very scathing terms of the conduct of the insurance company. Two days later the company sent leading counsel to inform the judge that it would take over all the liabilities of the defendant under the judgment. It would have been better for everyone if this stage had been reached earlier.

Landlord and Tenant Notebook.

Effect of Prohibited Alienation.

It was at one time possible to quote authorities on the proposition that no title passed by an assignment of a term which was contrary to the provisions of the lease. This authority was provided by some remarks made by Holroyd, J., in the course of the argument in *Paul* v. *Nurse* (1828), 8 B. & C. 486, and others made by Shee, J., in his judgment in *Elliott* v. *Johnson* (1866), L.R. 2 Q.B. 120. The plaintiff in the first-mentioned case claimed from the original assignees of a lease granted by his predecessor a half-year's rent. To his declaration they pleaded that they had assigned the term to another assignee before the rent accrued due. The plaintiff filed a replication citing a covenant against alienation without consent, and stating that none had been given. To this the defendants demurred. Upholding their contentions, the court rested its judgment on the circumstance that there was no privity (either of contract or of estate) to enable them to recover. Bayley, J., observed that they had the remedy of an action on the covenant not to assign. But Holroyd, J., was drawn into a more general discussion in the course of the argument, and expressed himself as follows: "The general principle is, that a lessee may assign his interest in the term. But the lessor may restrain the lessee from assigning by proviso or covenant; and if he grants the term subject to a condition that it shall cease if the lessee assigns, an assignment by the lessee will be void. But if the lessor, as in this case, restrain the lessee from assigning by covenant only, the latter by assigning commits a breach of covenant, but the assignment itself is not void."

The mistake the learned judge made was to treat a breach of condition or proviso for re-entry as avoiding the lease; but, apart from the fact that when there is such a proviso the landlord can operate it against the undesired assignee, it is right to say that *Paul* v. *Nurse* was decided before the commencement of a series of authorities emphasising the determination of the courts to construe such provisions as giving the grantor an option. These may be said to have commenced with *Doe d. Nash* v. *Birch* (1836), 1 M. & W. 402, a case in which a clause which said that in certain events the lease should be "null and void" was construed as merely making the lease voidable; the most recent authority is *Jardine* v. *Attorney-General for Newfoundland* [1932] A.C. 275.

At all events, Holroyd, J.'s remarks were *obiter*, but it cannot be said that when the point actually first came up for decision, in the other case, the result was entirely satisfactory. *Elliott* v. *Johnson* (1866), L.R. 2 Q.B. 120, was an action against a landlord of agricultural land for money due under a covenant to pay "for certain things" (as the report says) at a valuation. The plaintiff claimed as assignee of tenants who had held over from year to year after the expiration of a fourteen-year lease containing the covenant. They had got into difficulties, and on 12th March, 1861, executed both a deed of assignment to their creditors, providing for a payment of 4s. in the £, and an assignment of the lease to the plaintiff—though the lease contained a proviso for re-entry on assignment without consent. The landlord knew nothing about the transaction; still ignorant, he served notice to quit on the original tenants on 18th March, to expire at Michaelmas; a solicitor who acted for them and for the alleged assignee acknowledged it on 22nd March, and gave notice on the latter's behalf, also expiring at Michaelmas. The valuation was made "without prejudice," and no rent was paid by the plaintiff. While three judges did not agree why, they were unanimous in dismissing the claim. Mellor, J., looked upon it as an invalid claim for a chose in action; only such things would pass by the assignment as were essentially inherent in the tenancy itself. One could say more about this if one knew what the "certain things" were; but, *prima facie*, I should be inclined to say that a covenant to pay for things at a valuation contained in an agricultural lease would be a covenant running with the land. Shee, J., saw no objection to regarding the assignment as valid, especially as it would make more assets available to the assignors' creditors; but considered that in view of the prohibition contained in the lease, the assignors were unable to grant any interest which would be valid against the landlord. Lush, J., seized upon the nature of the tenancy. "I am of opinion (and no vestige of an authority has been cited to the contrary) that the doctrine of conditions running with the land is confined to covenants annexed to the land by indenture of demise, and there is no instance, as far as I know, in which a mere assignment of a parol tenancy has been held to pass to the assignees the right to enforce collateral stipulations."

The plaintiff in the above case may well have left the court with a bit of a headache. Apart from the question whether a right to be paid for "certain things" was a right "inherent in the tenancy itself," he may have wondered at the distinction drawn between parol tenancies and demises by indenture. But on this point, Lush, J., was certainly right, though since *Spencer's Case* (1583), 5 Co. Rep. 16a, and the Conveyancing Act, 1881, s. 11, have been superseded by L.P.A., 1925, s. 142, the distinction has, if some text-books appear not to have noticed it, ceased to bear any importance. For L.P.A., 1925, s. 142, occurs in Pt. V of the statute, which concludes with s. 154 making "lease" include "an underlease or other tenancy."

However, Shee, J., considered that the prohibition of alienation was a complete answer to the claim, as did Holroyd, J., in *Paul* v. *Nurse*. This notion was corrected by Blackburn, J., in *Williams* v. *Earle* (1868), L.R. 3 Q.B 739. In that case the tenant of a fourteen-year lease of a factory, granted in 1859, had assigned the term in 1860, after obtaining the stipulated consent, to the defendant. In 1866 the defendant, finding himself in financial difficulties, assigned to someone who was described as the editor of the *Cricketers' News*. The real point in issue was whether the covenant against alienation ran with the land so as to bind the

defendant, and it was held that it did; but besides giving a lucid exposition of the principles to be applied in assessing damages, Blackburn, J., said, *totidem verbis*, that the second assignment was valid in itself. "But though there is a covenant binding on the defendant not to assign, the assignment is nevertheless operative." The rule laid down for measuring damages assumes this—"the damage sustained . . . by reason of the plaintiff having only the liability of the inferior person, etc."—so the validity of the assignment against the landlord and everyone else may be considered authoritatively established. Indeed, in *Cohen* v. *Popular Restaurants, Ltd.* [1917] 1 K.B. 480, when *Williams* v. *Earle* was applied to a case in which a liquidator had assigned without the necessary consent, the validity of the assignment was never questioned.

Our County Court Letter.

The Quality of Stout.

In *Attwell and Wife* v. *Charrington & Co., Ltd., and Brooks*, recently heard at Bow County Court, the claim was for damages for negligence and breach of warranty. The plaintiffs' case was that a bottle of the first defendants' stout had been bought at the off-licensed premises of the second defendant. After drinking part of the contents of the bottle, the female plaintiff had experienced a burning sensation in the throat, followed by nausea and vomiting. An analysis of the rest of the liquid revealed the presence of three-quarters of an ounce of white spirit or paraffin product. The defence was a denial of negligence by the first defendants. The presence of the paraffin in the stout was inexplicable. The second defendant's case was that he had merely retailed the stout as supplied by the first defendants. Judgment was given for the plaintiffs for £20 5s. against the first defendants and for £5 5s. against the second defendant. See *Donoghue* v. *Stevenson* [1932] A.C. 562.

Temporary Pasture.

In a recent case at Shrewsbury County Court (*Royle* v. *Greenwood*) the claim was by the tenant for £135 13s. 9d. as compensation for temporary pasture. The arbitrator had stated a case for the opinion of the court on the following questions: (1) Whether the transfer of the farm to the applicant by his father, in pursuance of a family arrangement, was payment by the tenant (the applicant) for the temporary pastures, so as to entitle him to compensation therefor on quitting the farm; (2) whether the tenant was entitled to compensation, as he did not himself "lay down" the temporary pastures, but only left the land in temporary pasture. The evidence was that the applicant had taken over the farm from his brother in March, 1934, the owner being their father. The brother could have been held liable for bad husbandry and dilapidations and had therefore claimed no compensation. As the applicant had taken over the farm in a bad state, his case was that his father (the landlord) had—instead of paying him money—allowed him the benefit of the temporary pastures. The latter was therefore a *quid pro quo* for the bad state of the farm. In law there was no necessity for a cash payment, and the applicant had verbally agreed with his father to treat the temporary pastures as his own (the applicant's) in lieu of a cash allowance for taking over the farm in a bad state. The applicant's father had died in April, 1934, and the farm had been bought by the respondent in 1938. The applicant's tenancy had expired in March, 1939, and the statutory right to compensation, originally held by the applicant's brother, had been passed on through their father to the applicant under the family arrangement. The case for the respondent was that a condition precedent to any claim by the applicant was that he should have made a payment to the outgoing tenant. The record of the family arrangement was not made until after the father's death, and no inference as to his attitude could be drawn therefrom. Moreover, the applicant had not himself laid down the pastures, and therefore had not effected an improvement entitling him to compensation. His Honour Judge Samuel, K.C., observed that, as the applicant's brother had known that any claim by him for compensation would be exceeded by a claim for bad husbandry, it could not be inferred that any equivalent of payment had passed from the applicant, as incoming tenant, through the landlord to the outgoing tenant. The first question was therefore answered in the negative. As the applicant had not himself laid down the pastures, he could not claim compensation under the Agricultural Holdings Act, 1923, s. 5, and Sched. I, Pt. III (28). The second question was therefore also answered in the negative.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* The Solicitors' Journal.]

The Temple and the Law Courts.

Sir,—The tragic and wanton destruction savagely wrought by the enemy in the Temple leads me to put forward a suggestion which might be welcome in many quarters.

This suggestion is that in the replanning of London a new Royal Courts of Justice should be built on the site of the Temple, and that the present Law Courts site should be devoted to re-housing the Barristers of the Temple in modern up-to-date chambers where they could carry on their work with far greater comfort and efficiency than in the somewhat squalid and confused district (though admittedly picturesque) where at present they have to labour, where the working conditions are extremely difficult, and where no newcomer can, without a guide, find his way to any specified address.

No one who frequents the Courts would pretend that that building is satisfactory either in design or location—in fact, the standing joke is that the Office of Works of the time must have inadvertently adopted as the plans for the Courts those which had been prepared for the new St. Pancras Station!

On the other hand, the site of the Temple, with its beautiful gardens and riverside setting and with many architectural gems which could be preserved, would afford a worthy setting for a new monument of progress, symbolising the triumph of the ideals of justice over brutal murder and destruction. The Temple site is not only quiet but offers convenient access either from the Strand or the Embankment.

London, E.C.4. Charles L. Nordon.
14th January.

Liability of Solicitors and their Clerks for Military Service.

Sir,—At a special general meeting of this Society held on 29th October, 1940, the following resolutions were passed:—

(1) That the members of this Society are strongly of opinion that the administration of the law, and consequently the interests of the community, are now in danger of being jeopardised by the calling up of solicitors and their essential clerks, and that, as solicitors of military age constitute in numbers a very large proportion of the active members of the profession and many of these younger members are already serving, it is contrary to the national interests that further heavy depletion should be allowed, with its inevitable consequence of serious interference with the collection of national revenue and the administration of justice.

(2) That The Law Society be urgently requested to take all possible steps to secure—

(*a*) That solicitors and their essential clerks should immediately be included in the Schedule of Reserved Occupations at the age of thirty years, with retrospective effect so far as regards men already registered and awaiting calling-up;

(*b*) That in the national interests more adequate arrangements should be made to ensure that solicitors who enter the forces, either voluntarily or compulsorily, should be employed in a capacity in which their education and experience can be fully utilised;

(*c*) That the Deferment Tribunals recently set up by The Law Society should be empowered to recommend complete exemption or deferment for any period which they may deem suited to the particular circumstances, it being understood that any such exemption or deferment which may be granted is subject in all cases to review, if and when necessitated by changes in the military position.

The meeting was adjourned to enable the views of The Law Society and other Provincial Law Societies to be ascertained, and information subsequently received from The Law Society as to the steps which had been taken was placed before the members at the adjourned meeting held to-day, when the following resolution was passed, of which I was instructed to send you a copy:—

That the members of the Manchester Law Society, while confirming the resolution passed at the special general meeting held on 29th October, 1940, are satisfied, having considered a memorandum received from The Law Society as to the steps taken by its Council, that it is not possible to secure reservations for solicitors and their clerks at the age of thirty. They therefore very strongly urge the Council of The Law Society to press for reservation both of solicitors and their clerks at the age of thirty-six (subject

to the right of any solicitor or clerk over that age to volunteer for service) and for an improvement in the present procedure as to deferment for essential solicitors and clerks under that age. They pledge their full support to the Council of The Law Society in whatever steps may be thought advisable to secure their objects.

A. H. GOULTY,
Hon. Secretary,
The Manchester Law Society.

Manchester.
9th January.

To-day and Yesterday.

Legal Calendar.

20 January.—Sir James Ferguson, Lord Kilkerran, died at his home in Edinburgh on the 20th January, 1759, after ten years' service as a Lord of Justiciary. He was one of the best lawyers of his day. "His knowledge was founded on a thorough acquaintance with the Roman jurisprudence, imbibed from the best commentators of the Pandects. . . . The decisions which he has recorded during the period when he sat as a judge of the Supreme Court exhibit the clearest comprehension and the soundest views of jurisprudence and will for ever serve as a model for the most useful form of law reports." He collected and digested the decisions of the Court of Session from 1738 to 1752.

21 January.—On the 21st January, 1670, Claude Duval, the celebrated highwayman, was hanged at Tyburn.

22 January.—Eight years later, on the 22nd January, 1678, an even more picturesque character went the same way, and Mary Moders was hanged at Tyburn for theft, at the age of thirty-six. Witty, beautiful and courageous, she was admired by so good a judge of women as Pepys. Her father was a chorister in Canterbury Cathedral and her first husband a shoemaker. After an unsuccessful attempt to elope with the mate of a ship bound for Barbados, she travelled on the continent, and returning in the guise of a German princess she cheated into marriage a man who cheated her into believing he was a lord. Prosecuted for bigamy, she defended herself brilliantly and was acquitted. For a short time she was on the stage, but the remaining fifteen years of her life were devoted to a highly successful course of mad, merry and ingenious confidence tricks.

23 January.—An odd story is told of the death of Mr. Justice Yelverton in 1630. On the 23rd January he was sitting at supper at his house in Aldersgate Street when he felt a blow as if someone had struck him on the head. He angrily accused the servant who was waiting on him, but the fellow protested that he had not done so and had not seen anyone strike him. Soon afterwards he felt another blow like the first. He was thereupon carried to his bed and next morning he died.

24 January.—On the 24th January, 1676, Lord Finch took the oath as Lord Chancellor in the High Court of Chancery, Sir Harbottle Grimston, the Master of the Rolls, holding the book. Five years later he was created Earl of Nottingham, and that name has become great in the history of equity by reason of the pains and labour which he bestowed on the task of systematising the law administered in Chancery and the brilliant success which crowned his efforts. This he achieved not only by his work in court but also by compiling two treatises, one on the practice of Chancery and the other on the principles and doctrines of equity. He also set his face against delays in the dispatch of business.

25 January.—In his circuit recollections Lord Justice MacKinnon recalls the Assizes at Beaumaris of the 25th January, 1926. The court was "an extraordinary little barn-like structure" built in 1614. As the Grand Jury were being sworn he suggested that it would be convenient if each gentleman sat down after taking the oath, but it appeared that in the pen in which they were confined "there were no seats and no room for any." When he retired to the "Judge's Room," a "small wooden cupboard" in which there was just room for him to sit and smoke a pipe, the pressure of the spectators was such that the door on part of the structure gave way and he became the cynosure of curious eyes.

26 January.—Thomas Noon Talfourd, the son of a brewer at Reading, was born there on the 26th January, 1795. After completing his education at the grammar school he went to London to earn his living, for the family circumstances were not prosperous. While supporting himself by journalism he read for the Bar and was called in 1821 at the Middle Temple. After that he continued to report for *The Times* the business of the Oxford Circuit, which he joined. The competence of his work brought him into general notice and gradually briefs came his way, giving him the opportunity of proving his powers as an advocate. He became a Justice of the Common Pleas in 1849.

THE WEEK'S PERSONALITY.

Claude Duval, one of the highwaymen whose names have become legendary, was a Frenchman by extraction. Before he adopted a criminal career he is supposed to have been page to a nobleman. One of his most famous exploits figures in a metrical account of his life:

"Upon the road, I do declare,
I caused some lords and ladies fair
To quit their coach and dance with us.
This being done the case was thus
They for their music needs must pay
But now at last these jokes are past.
Well a day! Well a day!"

Another verse tells how:

"When I was mounted on my steed
I thought myself a man indeed
With pistol cocked and glittering sword.
'Stand and deliver' was the word;
Which makes me now lament and say
Pity the fall of great Devol.
Well a day! Well a day!"

A romantic halo shines about him, for he was the idol of the fair sex. Ladies of quality wept at his trial and execution and in Covent Garden Church they graced his splendid funeral. His epitaph read:

"Here lies Duval. Reader, if male thou art,
Look to thy purse; if female, to thy heart."

"TEN THOUSAND A YEAR."

An extract from an issue of a century ago recently reprinted in *The Times* is taken from a review of "Ten Thousand a Year," the extraordinary novel written at the age of thirty-three by Samuel Warren—almost his only effort in fiction, but one which was so successful as to retain an enormous popularity late into the century. He was a member of the Bar, became a Q.C., and might well have been made a judge, for he was popular enough and cultivated the right sort of acquaintances, had not his overweening vanity marred his social and forensic success. As it was he became a Master in Lunacy, but he always remained exceedingly proud of his authorship. One story of him tells how an Inner Temple student came to town with a letter of introduction to Warren. The perky, fresh-coloured, pleasant spoken little man received him with a mixture of pompousness and kindness, saying: "My dear young friend, I have the greatest regard for your father and I wish to show that regard by granting an exceptional favour to his son. Come with me into the next room." There, standing before an escritoire, he said: "Now, my young friend, for your father's sake I am going to do for you what I have never done for any young man before. Come forward, my young friend." So saying, he placed in the hands of the awestricken and expectant youth, a roll of paper, announcing: "Now, it is for your father's sake that I grant you this favour. The roll you hold in your hand is the original manuscript of 'Ten Thousand a Year'."

"AUTHOR!"

His vanity came out in all sorts of circumstances. He gave evidence in the great case over the will of Lord St. Leonards, and Sir Henry Hawkins, after examining him, said with a polite bow: "Mr. Warren, I owe you an apology for bringing you into the Probate Court. I am sure no one will ever dream of disputing *your* will, because you have left everybody 'Ten Thousand a Year'." Warren bowed in acknowledgment of the compliment. Then he made a bow to the judge, who returned it. Then he bowed to the jury, next to the Bar, and finally to the public gallery. In conversation as well as in print Warren was a good story teller, and his experiences as a Master in Lunacy provided him with some excellent anecdotes. Thus, he had to deal with one gentleman who alternately believed himself to be the Shah of Persia and St. Paul. In a confidential tone he told Warren how he could be both: "The explanation, my dear sir, is simple. It was the same mother but two fathers."

British merchant seamen rescued from the German prison ship "Altmark" have been asked to pay in a lump sum pension and health insurance contributions that accrued while they were prisoners, says *The Times*. They have been warned that their benefits may be cut unless the arrears are paid. It is understood that the Ministry of Health is considering an amendment of the law. The case of the "Altmark" men is exceptional. This issue did not arise in the last war and the position is not covered by present laws. The men say that if they had remained prisoners to the end of the war they would not have been asked for the arrears and would have been entitled to benefits after their release.

Points in Practice.

Questions from Solicitors who are **Registered Annual Subscribers only** are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C 4, and contain the name and address of the Subscriber. **In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

Joint Bank Account.—Funds provided by Husband.

Q. 3693. A husband and wife for many years had a joint bank account. All sums paid in were provided by the husband. Either party was entitled to sign cheques and each drew cheques from time to time mainly, but not exclusively, for housekeeping purposes. The husband has now died.

(1) Does the balance standing to the credit of the account belong to the widow, or is it part of the husband's estate?

(2) Are death duties payable in respect of it?

Under the same husband's will he bequeathed the whole of his personal effects to his widow. These, at her request, have been moved from the dwelling-house and placed in store. Is the cost of removal payable by her, or by the estate?

A. (1) The presumption in the case of a joint account with money provided by the husband is that the money is to belong to the wife if she survives, i.e., that the equitable title follows the legal one. The presumption in favour of advancement overrides what would otherwise be a resulting trust. *Re Harrison; Day* v. *Harrison* (1921), 90 L.J. Ch. 186, is perhaps the most recent authority. This presumption, however, is capable of being rebutted, as by statements of the husband or admissions by the wife or other facts which indicate that the joint account was only adopted for the convenience of the husband. *Marshall* v. *Crutlwell* (1875), L.R. 20 Eq. 328, is a strong case, where it was held by Jessel, M.R., that there was a resulting trust in favour of the husband on the ground of the account being made a joint one for the husband's convenience. If it is sought to rebut the presumption in favour of the wife, she can bring evidence of statements by the husband to rebut the resulting trust. The facts of the case put forward in the query seem to bring it within the *Marshall* v. *Crutlwell Case* rather than the *Harrison Case*, and if there is no definite evidence of the husband's intention and the amount in question is substantial, the executors may be recommended to go to the court, unless either the widow gives up any claim or the residuary legatees are *sui juris* and agree to admit the claim.

(2) Estate duty is payable on the full value in any event. Succession duty is also payable unless exemption can be claimed under s. 58 (2) of the Finance Act, 1910.

Limited Company in Evacuation Area.

Q. 3694. We shall be glad to have your opinion as to whether reg. 4 (4) (*a*) of the Defence (Evacuated Areas) Regulations, 1940, applies so as to render a limited company which carries on business in an evacuation area and has two shops in the area and closes *one* of them liable to pay rent in respect of the shop which it has closed. In effect, the point is whether limited companies which carry on business are to be altogether outside the provision, or whether the carrying on of business by a limited company is equivalent to residence by a person. We are acting for a landlord in such a case and desire to apply to the court for an order modifying the restriction imposed.

A. Regulation 4 (4) (*a*) of the Defence (Evacuated Areas) Regulations, 1940, cannot apply to limited companies, which are incapable of "residing" in the ordinary sense of the term (see *R.* v. *Fermanagh JJ.* (1897), 2 Ir. R. 563, and *Re Wright* [1907] 1 Ch. 231. Regulation 2 distinguishes and defines "business," and if reg. 4 (4) (*a*) had been intended to include the case of a business it would have said "or had a place of business." It is much more likely that the court will modify the restrictions if you apply under reg. 4 (4) (*b*), on the ground that the company has enjoyed a substantial benefit from the premises by keeping other premises open within the area.

Perjury at Affiliation Proceedings.

Q. 3695. In a paternity case A was adjudged the father of B's child and an order was made against him. In her evidence B, as part of her corroboration, stated that A had promised to marry her and that she had bought furniture. She was not cross-examined as to when or where she had bought this furniture or as to where it was. Her association with A was corroborated by two witnesses. A, who still denies paternity, states that he can prove that B did not buy furniture, and he has inquired whether B could be convicted of perjury, as he contends that the statement by B alleging the purchase of furniture was a material part of her corroboration. If B was convicted she would no doubt be unable to enforce the order against A. A cannot afford the expense of an appeal.

A. If B is successfully prosecuted for perjury committed at the affiliation proceedings in respect of an alleged purchase of furniture, that will be good cause for a subsequent order by the magistrates revoking or varying the previous order for the payment of money by A to B (*Batchelor* v. *Smith* (1935), *The Times*, 12th January, cited in "Lushington on Bastardy," 6th ed., p. 127). Section 30 (3) of the Criminal Justice Administration Act, 1914, gives the court this power, and *Batchelor* v. *Smith* decides that a later conviction of an applicant for perjury committed at the affiliation proceedings is "fresh evidence" within the meaning of the section as it then stood. As amended by the Money Payments (Justices Procedure) Act, 1935, it is only necessary to show cause to revoke, revive or vary the order, so that A's position is, if anything, strengthened by the amendment. The order adjudging A to be the father of the child cannot be set aside except by appeal (*Colchester* v. *Peck* [1926] 2 K.B. 366), but the part relating to the payment of money can be dealt with in accordance with the decision in *Batchelor* v. *Smith*. The fact that there is other corroboration makes no difference, as B's subsequent conviction for perjury goes to the root of the whole story, and therefore constitutes good cause for revoking the order for the payment of money by A to B.

Straying Cattle.

Q. 3696. We see it stated in the public Press that a farmer whose cattle stray on and damage allotments is liable for the damage whether or not he was negligent. Is this a correct statement of the law? We recently advised in such a case, unless the claimant could prove a liability on the farmer to fence his field, which would not be the case at common law, that the damage was irrecoverable.

A. The statement of the law in the public Press was correct. The farmer is under an obligation to prevent his cattle from trespassing, and is liable in damages for any injury they may do to neighbouring property. See *Holgate* v. *Bleazard* [1917] 1 K.B. 443.

Obituary.

MR. BASIL WATSON, K.C.

Mr. Basil Bernard Watson, K.C., Metropolitan Police Magistrate, died on Monday, 20th January, at the age of sixty-three. Mr. Watson was educated at Eton and Trinity College, Cambridge, and was called to the Bar by the Inner Temple in 1902. He took silk in 1923, and the same year was appointed to the Metropolitan Bench. Since 1926 he had sat at the North London Court.

MR. E. L. BURGIN.

Mr. Edward Lambert Burgin, formerly senior partner of Messrs. Denton, Hall & Burgin, solicitors, of 3, Gray's Inn Place, W.C.1, died on Sunday, 19th January, at the age of eighty-three. Mr. Burgin was admitted a solicitor in 1885.

Rules and Orders.

S.R. & O., 1941, No. 68.

EMERGENCY POWERS (DEFENCE).

GENERAL REGULATIONS.

Order in Council adding Regulation 26A and 27B to the Defence (General) Regulations, 1939, substituting a new Regulation for Regulation 27A thereof and amending the Third Schedule thereto. [Price 2d. net.

S.R. & O., 1941, No. 69.

EMERGENCY POWERS (DEFENCE).

FIRE PRECAUTIONS.

The Fire Prevention (Business Premises) Order, 1941, dated January 18, 1941, made by the Minister of Home Security under Regulations 27A and 38 of the Defence (General) Regulations, 1939. [Price 2d. net.

S.R. & O., 1941, No. 70.

EMERGENCY POWERS (DEFENCE).

CIVIL DEFENCE.

The Civil Defence Duties (Compulsory Enrolment) Order, 1941, dated January 18, 1941, made by the Minister of Home Security under Regulations 26A and 38 of the Defence (General) Regulations, 1939. [Price 2d. net.

Notes of Cases.

HOUSE OF LORDS.

Nokes *v.* Doncaster Amalgamated Collieries, Ltd.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Romer and Lord Porter. 1st August, 1940.

Master and servant—Miner—Contract of service with company—Amalgamation—Transfer of assets and liabilities of company to another company—Order of court—Miner unaware of transfer—Whether under contract of service to transferee company—Companies Act, 1929 (19 & 20 *Geo.* 5, *c.* 23), *s.* 154.

Appeal from a decision of the Court of Appeal (83 Sol. J. 377; 55 T.L.R. 703) affirming a decision of a Divisional Court (82 Sol. J. 853).

In January, 1937, one Nokes, a miner, entered into a written contract of service with the Hickleton Main Colliery Co., Ltd., to serve them at a colliery where he worked thereafter. In June, 1937, on an amalgamation an order was made in the Chancery Division under the Companies Act, 1929, s. 154, transferring to the Doncaster Amalgamated Collieries, Ltd., the property, rights and liabilities of the Hickleton Company, and dissolving that company under the Act. The terms of that order never came to the notice of Nokes, who till the 7th October, 1937, believed himself to be working for the Hickleton Main Colliery Co., Ltd. On that date, on the occasion of a strike, he absented himself without cause from work. At the Court of Petty Sessions the justices ordered him to pay 15s. damages for breach of the contract of service, which they held existed between himself and the Doncaster Amalgamated Collieries, Ltd. The Divisional Court affirmed that decision, and the Court of Appeal dismissed an appeal by Nokes, who now appealed to the House. (*Cur. adv. vult.*)

Lord Simon, L.C., said that after giving full weight to the unanimity of view expressed in the courts below by judges, some of whom spoke with special authority on that sort of subject-matter, and after examining s. 154 with close attention, he could come to no other conclusion than that an order made under it did not automatically transfer contracts of personal service. The word "contract" did not appear in the section at all, and he did not agree with the view expressed in the Court of Appeal that a right to the service of an employee was the property of the transferor company. Such a right could not be the subject of gift or bequest; it could not be bought or sold; it formed no part of the assets of the employer for the purpose of administering his estate. In short, s. 154, when it provided for "transfer," was contemplating, in his opinion, the transfer of those rights which were not incapable of transfer, and not that of rights which were in their nature incapable of being transferred. His judgment was limited to contracts of personal service, with which the present appeal was concerned. It might well be that current contracts for the supply and purchase of goods were subject to what might be called a statutory novation, except contracts for the supply of "your requirements" or the like, which, like contracts to obey "your orders," did not seem to be capable of automatic transfer. The conclusion at which he had arrived might be regarded as limiting the usefulness of the section, but to that consideration there were two answers: First, he was not justified on that account in giving to the section a wider effect than its true interpretation should provide, and there must be great advantages in avoiding the necessity of liquidation and in effecting transfers without further act or deed in cases contemplated by the section. Secondly, if the Legislature really desired that workmen should be transferred to a new employer without their consent being obtained, plainer words could be devised to express that intention. The appeal should be allowed.

Lord Atkin, Lord Thankerton and Lord Porter agreed.

Lord Romer dissented.

Counsel: *J. W. Morris*, K.C., and *Granville Sharp*: *Wynn Parry*, K.C., and *Hylton-Foster*.

Solicitors: *Hosking & Berkeley* for *J. W. Fenoughty, Dunn & Co.*, Rotherham; *Bird & Bird*, for *Gichard & Co.*, Rotherham.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

COURT OF APPEAL.

Harling (Inspector of Taxes) *v.* Celynen Collieries Workmen's Institute.

Scott, Clauson and Goddard, L.JJ. 2nd July, 1940.

Revenue—Income tax—Losses—Relief extending to "six following years of assessment"—Year in which loss basis of assessment to count—Finance Act, 1926 (16 & 17 *Geo.* 5, *c.* 22), *s.* 33 (1).

Appeal from a decision of Lawrence, J., [1940] 2 K.B. 386; 84 Sol. J. 406.

The Celynen Collieries Workmen's Institute were assessed for the year ending the 5th April, 1938, to income tax in the sum of £451, under Sched. D to the Income Tax Act, 1918. Their accounts were made up to the 31st December in each year, and in the years ending the 31st December, 1929 and 1930, they made losses of £269 and £1,639 respectively. In the years ending the 31st December, 1931 and 1932, they made profits in respect of which they were duly assessed, a corresponding amount being deducted from each assessment in respect of the previous losses under s. 33 (1) of the Finance Act, 1926. By that subsection a person who has sustained a loss in his trade or profession is empowered to claim that any portion of the loss for which relief has not been obtained under any other statutory provisions "shall be carried forward and, as far as may be, deducted from or set-off against the amount of profits . . . on which he is assessed . . . for the six following years of assessment. . . ." For the year ending the 31st December, 1933, there was a further loss of £28, and for the years ending the 31st December, 1934, 1935 and 1936, there were again profits in respect of which they were assessed for the years ending the 5th April, 1936, 1937 and 1938. Against the assessment of £451 for the year ending the 5th April, 1938, the institute received allowance under s. 33 in respect only of the £28 lost for the year ending the 31st December, 1933. But at the 5th April, 1938, a balance of £426 of the total of the losses suffered in the previous years had not yet been allowed by way of relief under s. 33 (1), and the institute claimed that that sum with £25 of the £28 loss for the year ending the 31st December, 1933, should be allowed as a deduction, and that the assessment in question should therefore not be £451, but "nil." They accordingly appealed to General Commissioners, contending that the expression "the six following years of assessment" included the year of assessment ending the 5th April, 1938, because there could not be an assessment for the year ending the 5th April, 1932, corresponding to the institute's financial year ending the 31st December, 1930, for which they had made a loss. It was contended for the Crown that s. 33 (1) referred to an actual loss sustained in any year and not to a statutory loss computed by reference to the loss actually sustained in a preceding year; that relief was allowable "so far as may be" against the assessments for the six years immediately following the year of loss, but no further; and that the year ending the 5th April, 1932, was, although the assessment for that year must be "nil" because of the loss of the preceding year, yet the first year subsequent to the year ending the 31st December, 1930, with the consequence that the year ending the 5th April, 1937, was the sixth following year of assessment, and the last year for which relief could be claimed under s. 33 (1). Lawrence, J., held, affirming the decision of the Commissioners, that the six years referred to in s. 33 (1) ran, not from the year 1931/32, which was the tax year of assessment, into which that loss suffered in 1930 would come forward for consideration, but from the year 1932/33. The Crown appealed.

Scott, L.J., said that in his opinion Lawrence, J., had erred in the construction which he adopted to the effect that "the six following years" should be construed as referring to the six years following after the year of assessment in which the loss came up for consideration—namely, the year ending the 5th April, 1932, the assessment depending in that year on the result of the accounts of the year preceding that year of assessment. That interpretation depended on the tacit introduction into the language of s. 33 (1) of words which were not there. A clear meaning could be given to the words actually used as they stood, and therefore that meaning must be given to them by the ordinary principles of the interpretation of statutes. There was no justification for introducing by implication into those words a reference to the year in which the loss came up for consideration, when the only *terminus a quo* indicated in the section was the year in which the person had in his trade sustained a loss. The section, in its first two lines, began by referring impliedly to that year; and to push the six-year period forward by introducing, before it should begin, the year in which the loss came up for consideration, was to introduce words into s. 33 (1) which it did not contain. The appeal must be allowed.

Clauson and Goddard, L.JJ., agreed.

Counsel: *The Solicitor-General* (Sir William Jowitt, K.C.), and *R. P. Hills*; *F. Grant*.

Solicitors: *Collyer-Bristow & Co.*, for *D. Granville West*, Newbridge, Mon.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

APPEAL FROM COUNTY COURT.

Major *v.* Mouser.

Scott, MacKinnon and du Parcq, L.JJ. 16th and 17th January, 1941.

Landlord and tenant—Rent Restrictions—Statutory tenancy—"Actual possession"—Death of statutory tenant—New agreement with person residing with her—Increase of Rent and Mortgage Interest (Restrictions) Acts, 1920 (10 & 11 *Geo.* 5, *c.* 17), *s.* 12 (1) (*g*); 1923 (13 & 14 *Geo.* 5, *c.* 32) *s.* 2 (1); 1933 (23 & 24 *Geo.* 5, *c.* 32), *s.* 16 (1); 1938, 1 & 2 *Geo.* 6, *c.* 26), *s.* 7 (1).

Appeal from a judgment for the plaintiff given by His Honour Judge Haydon, K.C., at Kingston County Court on 19th November, 1940. The action was for arrears of rent of No. 79, Russel Road, Wimbledon, and the defence was that the premises were within the Rent Acts and that therefore the rent was not due. A Mr. Austin was tenant of the premises in question from 1906 to 1926, latterly as statutory tenant. On 12th February, 1926, he died, and his widow succeeded him as statutory tenant under s. 12 (1) (*g*) of the 1920 Act. She died on 22nd January, 1929, and the defendant, who was one of the children of Mr. Austin then residing in the house, entered into a fresh agreement with the landlord by which she took over the tenancy at £1 a week, and the landlord never had any possession, actual or notional. The house was registered under s. 2 (2) of the 1933 Act, but it was conceded on behalf of the plaintiff that this was of no effect. His Honour held

in a reserved judgment that the statutory tenancy finished on the death of Mrs. Austin and that her right under s. 12 (1) (*g*) having come to an end, the principal Act ceased to apply to the premises, and that therefore the plaintiff had discharged the onus of proving that the tenancy was decontrolled. By s. 12 (1) (*g*) of the 1920 Act, the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death. By s. 2 (1) of the 1923 Act, "Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house." By s. 2 (3) of the 1920 Act, "for the purposes of this section, the expression 'possession' shall be construed as meaning 'actual possession,' and a landlord shall not be deemed to have come into possession by reason only of a change of tenancy made with his consent." By s. 16 (1) of the 1933 Act, "recoverable rent" means, in relation to any dwelling-house, the maximum rent which, under the provisions of the principal Act, is or was recoverable from the tenant. Section 7 (1) of the 1938 Act provides that if any question arises in any proceedings whether the principal Acts apply to a dwelling-house, it shall be deemed to be a dwelling-house to which those Acts apply unless the contrary is shown.

SCOTT, L.J., said that the first point in the case turned upon what happened on the death of the widow of a statutory tenant. Mrs. Major paid the £1 a week for some time, but later on was advised that she was a statutory tenant and therefore not bound to pay more rent than that paid by her stepmother, which was less than £1 a week. The question was whether or not Mrs. Major was entitled to the benefit of the statutory limitation of the amount of rent. Under s. 2 of the 1923 Act it was necessary on the facts of this case for proof to be given that the landlord had obtained actual possession on the death of Mrs Austin. It being conceded that the landlord never had possession, actual or notional, *prima facie* the plaintiff was out of court. In his lordship's view, the learned judge should have given effect logically to the view that the plaintiff's predecessor in title had never gone into possession at all, and that was enough to make it necessary to allow the appeal.

MACKINNON, L.J., agreed and said that there was no dispute that the premises were controlled until the beginning of 1929, and they would continue to be so until taken out of the control of the Acts. Proof that this was so was a burden of the landlord under s. 7 (1) of the 1938 Act. The landlord did not only not prove that, but admitted that his predecessor in title had never come into possession. The obvious result was that the plaintiff had failed to discharge the onus of proof and the appeal succeeded.

DU PARCQ, L.J., agreed and said that this was a most unfortunate way of trying proceedings of that kind. It was most desirable that evidence should be heard. It was not satisfactory in the county court that statements should be made and admissions made and the case heard as if on a case stated. The landlord had the burden of proving that the premises were decontrolled. Mr. Edmunds said that the landlord came into possession without knowing it, and relied on *Goudge* v. *Broughton* [1929] 1 K.B. 103. He said that though someone else might become tenant and there was no time when the landlord did not receive rent, till there was notionally a moment when the old tenant went out and the new tenant came in. He argued that when the old tenant died he new tenant was a licensee. The point in *Goudge* v. *Broughton*, *supra*, was that it was said that the plaintiff was not a landlord. The Divisional Court was bound to follow *Cohen* v. *Gold* [1927] 1 K.B. 865, but the Court of Appeal reversed *Cohen* v. *Gold*. All that the court decided was that where a man who must now be held to be the landlord and wa in possession and had a gardener there he must be held to be in actual possession. This was a long way from saying that the landlord had actual possession during the few minutes when the tenant was negotiating a tenancy on the doorstep. He also relied on *Kearns* v. *Bedford* (1934), 50 T.L.R. 348, on the question of the *hiatus* between the tenancies. His lordship still thought that where the statutory tenancy ended on the Friday and the new tenancy started on the Saturday it was wrong to say that there had been actual possession. *Kearns* v. *Bedford*, *supra*, was a case in which by general consent the landlord had come into actual possession. The appeal succeeded.

COUNSEL: *S. N. Bernstein; H. Humfrey Edmunds.*

SOLICITORS: *Barnett Janner; Bristows, Cooke & Carpmael.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Pictorial Machinery, Ltd. *v.* Nicolls,

Humphreys, J. 15th August, 1940.

Insurance—Damage to property caused by negligence of assured or employees—Indemnity against claims—Condition in policy that assured to use all reasonable precautions—Whether a "condition precedent" as described in policy—Failure to observe condition no bar to recovery unless cause of accident.

Action on an insurance policy.

The plaintiff company were insured under a policy whereby the insurers, whom the defendant represented, undertook to indemnify the policyholders "against all sums which the assured shall become legally liable to pay in respect of claims" for compensation for "damage to property resulting from any accident . . . occurring in or about the places described in the schedule caused by the . . . negligence of the assured or their employees while engaged in the assured's business as specified in the schedule . . ." In the schedule to the policy the assured's business was described as that of printers, engineers and suppliers. The insurers were accordingly aware that the assured delivered goods to other persons as well as manufacturing them on their own premises. The places specified in the schedule included "elsewhere where the assured's employees may be working." In August, 1939, the plaintiffs instructed one of their messengers to deliver in the course of their business two glass winchesters containing acetone to the premises of a company called Wardland, Ltd., which were near the plaintiffs' premises, that company having bought the acetone from the plaintiffs. The messenger negligently dropped one of the bottles at Wardland, Ltd.'s premises, a fire resulting which caused serious damage to those and adjoining premises. Claims in respect of that damage were made against the plaintiffs. Evidence was given that acetone is a highly volatile liquid, likely to cause fire if released near a naked light. The policy also provided under the heading "Conditions Precedent," *inter alia*, that the assured should "at all times exercise reasonable care in seeing that the ways, implements, plant, machinery and appliances used in his business are substantial and sound, . . . and fit for the purpose for which they are used, and that all reasonable safeguards and precautions against accident are provided and used." The plaintiffs brought the present action under the policy, claiming to be indemnified in respect of the claims made against them.

HUMPHREYS, J., said that the underwriters had argued, first, that the mere fact that the plaintiffs' messenger was on the premises of someone else in the course of his duty did not justify the court in holding that he was working there within the meaning of the policy. In his (his lordship's) opinion the messenger was working as his employers' servant in delivering the bottles just as much as if he had been manufacturing something on their behalf. The substantial defence was the contention that the plaintiffs were debarred from recovering because of breach of the so-called "condition precedent" No. 8. A condition precedent was one precedent to the insurers' liability. "Condition precedent" No. 1 was no such condition, for it was merely a definition stating that the policy was subscribed subject to conditions specified. Why Lloyd's should continue that use, or rather misuse, of the term "condition precedent," after it had been pointed out to them by the Court of Appeal in 1911 that many of the supposed conditions precedent were clearly no such thing, he did not know. It was beyond argument that many of the conditions did not conform to that description. It was, however, pleaded that, condition 8 being a condition precedent, there could be no liability on the underwriters if it were broken, and that it had been broken in that there was a failure to take reasonable precautions constituted by omitting to put the winchesters into a proper container and allowing the messenger to carry them in his arms. If the words of condition 8 were construed in the widest possible way, the remarkable result would ensue that if, for example, the plaintiffs had neglected to keep a cellar-flap in proper condition, so that a pedestrian walking over it might fall over it, then, although no one in fact ever did fall over it, yet, because of his neglect in that particular, the assured would be debarred from recovering under the policy in respect of a fire caused by his employee's negligence at entirely different premises. He agreed with the construction put on a similar condition by Branson, J., in *Concrete, Ltd.* v. *Attenborough* (1939), unreported, but see 65 Ll. L. 174. There the breach of the condition was probably connected with the accident, and Branson, J.'s observations were confined to such a case. While it was not, in his (Humphreys, J.'s) opinion, a condition precedent, it was certainly an express condition of the policy, and unobjectionable except under the heading "Conditions Precedent." That reasonable condition must not be construed to have the absurd result indicated above. The breach must be connected with the accident, even though it need not have caused it. On the facts of the present case it could not be said that the breach of the condition, if any, did not have any connection at all with the accident. He found as a fact, however, that there had been no breach of the condition. Consequently the plaintiffs were entitled to be indemnified.

COUNSEL: *Willink*, K.C., and *F. W. Wallace*; *Lynskey*, K.C., and *Austin Farleigh.*

SOLICITORS: *Watson, Sons & Room*; *Edward & Childs.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Westminster Assessment Committee, *ex parte* St. James' Court Estate, Ltd.

Viscount Caldecote, C.J., Hawke and Humphreys, JJ.
18th October, 1940.

Rating and valuation—Block of flats—Vacation of tenancies—Rising cost of services—Application for reduction of assessments—"Cause"—Valuation (Metropolis) Act, 1869 (32 & 33 Vict., c. 67), s. 47.

Applications for orders for *mandamus* and *certiorari*.

At the outbreak of war 176 unfurnished suites, out of 183, at St. James' Court were let and occupied. By March, 1940, a number of leases had fallen in and had not been renewed, and the rents of other

flats had been reduced, while at the same time the cost of the services provided by the company to their tenants had increased considerably. On a requisition by the company owning the premises for a provisional valuation list, the Westminster Assessment Committee made an order refusing to reduce the assessments. The present applications were accordingly made for orders for *mandamus* directed to the assessment committee to insert the 225 flats at St. James' Court in a provisional valuation list at a reduced value, and for *certiorari* to bring up to be quashed the order made by the committee.

LORD CALDECOTE, C.J., said that the company, to succeed, must show that the reduction in the value of their premises was due to a "cause" within s. 47 of the Valuation (Metropolis) Act, 1869. It must be shown that the alteration in the value of the premises did not arise from a cause affecting all classes of the community, for a general change in values was not sufficient (*Ellis* v. *Camberwell Assessment Committee* [1900] A.C. 510). In that case Lord Halsbury said that there must be something beyond the mere suggestion of a valuer that a hereditament had changed in value. The first "cause" suggested in the present case was that the company's premises were in an evacuation zone. That fact, however, resulted in a reduction in the value of a great number of hereditaments in London. It might be said without exaggeration that it had affected a very large part of, if not all, the property in Westminster. That fact, therefore, could not constitute a "cause" within s. 47. Secondly, it was argued, the loss suffered by the company through their not being able to obtain payment for services from as many tenants as heretofore was a "cause" of the fall in value of the hereditaments. That would appear to be a confusion of thought. A hypothetical tenant, in considering what rent he was prepared to offer for a flat, did not care whether or not any services were rendered to other persons. The loss of the company's profit under that head was a result of the departure of tenants from the building, but that was very far from saying that it was due to a "cause," within the meaning of the section, resulting in the reduction of the value of the hereditaments. The applications must be refused.

HAWKE and HUMPHREYS, JJ., agreed.

COUNSEL: *H. B. Williams; Montgomery*, K.C., and *Scott Henderson*.
SOLICITORS: *Trollope & Winckworth; Allen & Son*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Societies.

Annual General Meeting of the Bar.

The Annual General Meeting of the Bar was held in Lincoln's Inn, on the 14th January, with the Attorney-General, Sir Donald Somervell, K.C., M.P., in the chair. In his opening address the Attorney-General expressed the regret of all at the absence of the Chairman of the General Council of the Bar (Sir Herbert Cunliffe, K.C.) who had contracted a severe chill. He welcomed the trusted Vice-Chairman, Mr. R. E. L. Vaughan Williams, K.C. He went on to mention the heavy damage and destruction that the Inns of Court has suffered since the last meeting; halls and libraries had been damaged and chambers had been destroyed. But, like others who had had to face similar difficulties, the Bar was carrying on, and the only effect was to reinforce its determination to go forward to final victory. During the previous twelve months the Bar had suffered the loss of three members who had given long service to the work of the Council: Sir Stafford Crossman, Sir Reginald Coventry, and Mr. W. D. Mathias, of the Western Circuit. He felt sure that the meeting would wish to record their appreciation of the services these gentlemen had rendered, and of the loss sustained by their death, and sympathy with Lady Crossman and Lady Coventry. Owing, he said, to the absence on war service of many members of the profession, difficulties had arisen in certain places in finding counsel to appear on behalf of poor persons. The Council had screened a notice in which it urged members of the Bar not on war service to indicate to the Secretary of the Poor Persons Committee their willingness to undertake this work. He was sure it would be the desire of the Bar that no difficulty should arise in the conduct of these cases, and he hoped there would be a generous response. He mentioned with grateful admiration the offer of The Law Society of Upper Canada to assist in placing in suitable homes the children of judges and barristers of England and Scotland. Similar offers had been received from the Nova Scotia Barristers' Society, the Law Society of Alberta and a number of private individuals in Canada and the United States of America. He thought it was fitting that the Annual General Meeting should endorse the expressions of warm appreciation already sent by the Council and express great gratitude for the offer and for the feelings which prompted it.

An article which had appeared in the American Bar Association Journal for October, 1940, was headed, "Salute to the Bar of England," and mentioned the connection between our law and American law, legal institutions and legal history; it ended by saying that, while no one could yet tell what history would say about the present titanic conflict, yet already it was possible to be sure of one thing; what the future would say about English courage and English spirit. As American lawyers, they lifted their hats to their brethren across the sea. Feeling such as that, coming from across the water, not only evoked deep appreciation but also did much to help us in carrying on our duties in the conditions which now prevailed.

The Attorney-General concluded with an expression of gratitude to the Council members for the time and care which they gave to the various matters brought before them. He himself had had the privilege for many years of being a member of the Council, and so could speak from personal knowledge of the time which members gave to their duties.

SIGNATURE OF TAXATION VOUCHERS.

Mr. R. E. L. VAUGHAN WILLIAMS, K.C., then moved the adoption of the annual statement, saying that he was quite sure that members would appreciate that in these times questions of expense must be considered. For reasons of economy the statement was not being circulated this year, but copies were available to anyone who cared to ask for one at the office of the Council. He hoped this course would commend itself to members. In the matter of vouchers for the taxation of fees, a certain latitude had been developed so that people not actually being counsel entitled to the fee would get their signatures accepted. This was not in accordance with the rules and opened the door to certain undesirable practices. Recently a certain Master had refused to accept any signature except the right one, and as a result the matter had been taken up. It had now been arranged that the signature of the secretary of the Bar Council would be accepted in lieu of the signature of a counsel unable to sign for himself. The actual signature was not always easy to get in war-time: a great many members of the Bar were now serving, or were elsewhere than in their usual haunts. In order that members might not think that they could deal with change of address by general advertisement, an arrangement had been made whereby changes of address could be obtained at the offices of the Bar Council.

The motion was seconded by Mr. W. C. Cleveland Stevens, K.C., and carried unanimously.

The ATTORNEY-GENERAL moved, and Mr. Vaughan Williams seconded, a proposal that the present Council should continue in office and the annual election be suspended for the duration of the war. The Attorney-General said that this had been done in the last war and was being done by other similar bodies now. An election would cost some £35, and would be very difficult with so many members away. The resolution was carried.

Mr. M. MCGUIRK then moved:

"That the conduct of the Council in relation to distress among members of the Bar is unworthy of the profession and is deserving of censure."

He pointed out that a very high standard was demanded of members of the Bar, and that annual statements frequently contained "musts" and "must nots," which a member would disregard at his peril. He asked if there was no standard to prevent members of Council from setting forth statements so misleading as to be calculated to deceive. He referred to the paragraph about war appointments for barristers, and denied that the Council had kept in close touch with the Lord Chancellor's Committee on Appointments.

The ATTORNEY-GENERAL ruled Mr. McGuirk out of order because his motion appeared to refer to "distress" and his speech to "war appointments." Mr. McGuirk claimed that war appointments were one of the methods of dealing with distress, but the Attorney-General maintained that they were two quite different things. Mr. McGuirk did not continue his speech.

A vote of thanks to the auditors was proposed by Mr. H. B. Vaisey, K.C., and seconded by Mr. J. Lhind Pratt; and to the Attorney-General by Mr. A. T. Miller, K.C., and seconded by Mr. G. F. Kingham. The Attorney-General briefly replied.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL *from the 16th September, 1939, to the 18th January, 1941.*)

STATUTORY RULES AND ORDERS, 1940-41.

E.P. 20. **Acquisition of Securities** (No. 1) Order, January 11, 1941.
No. 5. **Aliens** (Protected Areas) Order, January 7, 1941.
No. 2210. **Civil Defence** (Specified Areas) (No. 2) Order, December 31, 1940.
E.P. 37. **Cold Storage** (Control of Undertakings) Order, January 11, 1941.
No. 18. **Export of Goods** (Control) (No. 1) Order, January 8, 1941.
No. 19. Export of Goods (Control) (No. 2) Order, January 8, 1941.
E.P. 31. **Feeding Stuffs** (Control) (Northern Ireland) Order, January 9, 1941.
E.P. 32. Feeding Stuffs (Rationing) (Northern Ireland) Order, January 9, 1941.
E.P. 23. **Food** (Current Prices) Order, January 8, 1941.
E.P. 36. Food Rationing Order, 1939, Directions, January 6, 1940. Amendment Order, January 11, 1941.
E.P. 15. Food (Rationing). Order, January 4, 1941, amending the Rationing Order, 1939, and the Directions, January 6, 1940, made thereunder, and revoking the Directions, April 9, 1940, made thereunder.

No. 34. **Gas Fund** (Contribution) Order, January 9, 1941.
No. 22 L.1. **Indian** (Non-Domiciled Parties) Divorce (Amendment) Rules, January 1, 1941.
No. 2208 L.43. **Matrimonial Causes** (Emergency Powers) Rules, December 19, 1940.
E.P. 24. **Medical Register** (Temporary Registration) Order, January 1, 1941.
E.P. 29. **Oat Products** (Control and Maximum Prices) Order, 1940. Amendment Order, January 9, 1941.
E.P. 30. Oat Products (Control and Maximum Prices) Order, 1940. General Licence, January 9, 1941.
E.P. 35. **Oats** (Control and Maximum Prices) Order, 1940. Amendment Order, January 10, 1941.
E.P. 27. **Rabbits** (Maximum Prices) Order, January 9, 1941.
No. 2201. **Railways Agreement** (Powers) Order (London Passenger Transport Board), December 31, 1940.
E.P. 2164. **Requisitioning of New Privately owned Railway Wagons** (No. 7) Notice, December 17, 1940. (Amended Reprint.)
E.P. 28. **Sugar** (Weights and Measures) (Revocation) Order, January 9, 1941.

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. N. L. C. MACASKIE, K.C., be appointed Recorder of Sheffield to succeed Mr. Arthur Morley, K.C., who has been appointed Recorder of Leeds.

The King has approved the appointment of Mr. AUGUSTUS ANDREWES UTHWATT as one of the Justices of the High Court of Justice (Chancery Division). The appointment is due to the death of Mr. Justice Crossman. Mr. Andrewes Uthwatt was called to the Bar by Gray's Inn in 1904, and became a Bencher of his Inn in 1927. In 1934 he was appointed Junior Counsel to the Treasury.

The Lord Chancellor has appointed Mr. I. K. FRASER (Registrar of the Southwark County Court) to be Registrar of Woolwich County Court, and Mr. H. WINNETT (Registrar of Gravesend County Court) to be Registrar of Dartford County Court as from the 1st January, 1941.

Mr. J. E. LIGHTBURN, deputy clerk of the Kent County Council, has been appointed Clerk of the Essex County Council, Mr. Lightburn was admitted a solicitor in 1914.

Notes.

At a general meeting recently of the Life Offices' Association, Mr. H. E. Raynes, actuary and life manager of the Legal and General Assurance Society, was elected chairman, and Mr. A. H. Shrewsbury, secretary and actuary of the Law Union and Rock Insurance Company, was elected deputy chairman.

The Treasury announce that a reprint has been made of the Defence (Finance) Regulations, 1939, as amended up to 1st January, 1941, and has been published together with a classified list of Orders made under the Regulations and in force on 1st January, 1941. Copies may be obtained from H.M. Stationery Office, York House, Kingsway, London, W.C.2.

BARRISTERS' ADDRESSES.

The General Council of the Bar (5, Stone Buildings, Lincoln's Inn, W.C.2) will be glad to record the changes of addresses and new telephone numbers of any members of the Bar caused by enemy action, and to inform any inquirers of such changes.

H.M. LAND REGISTRY.

MARSHAM COURT, BOURNEMOUTH.

The Chief Land Registrar thinks it may be helpful if he reminds solicitors that when wishing to compare abstracts of land certificates supplied to them by vendors with the register and filed plans at Bournemouth, it is open to them, if authorised to inspect the register, to apply by post for an office copy of the register and of the filed plan (where the latter is considered desirable). These are supplied in normal cases for a fee of 1s. 6d. and 2s. respectively. The application may be in any form—a letter is sufficient—if accompanied by the authority to inspect the register.

It greatly facilitates matters, however, if in the first instance the vendor supplies office copies of the register and filed plan instead of preparing them himself, as under section 113 of the Land Registration Act, 1925, such office copies are admissible in evidence to the same extent as the original.

The Chief Land Registrar would also remind solicitors that prints of Land Registry forms are purchasable from H.M. Stationery Office. They cannot be obtained from the Land Registry.

Court Papers.

SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT NO. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Jan. 27	Blaker	Jones	Hay
,, 28	Andrews	Hay	More
,, 29	Jones	More	Blaker
,, 30	Hay	Blaker	Andrews
,, 31	More	Andrews	Jones
Feb. 1	Blaker	Jones	Hay

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON.
	Non-Witness.	Witness.	Non-Witness.	Witness.
	Mr.	Mr.	Mr.	Mr.
Jan. 27	Andrews	Jones	More	Blaker
,, 28	Jones	Hay	Blaker	Andrews
,, 29	Hay	More	Andrews	Jones
,, 30	More	Blaker	Jones	Hay
,, 31	Blaker	Andrews	Hay	More
Feb. 1	Andrews	Jones	More	Blaker

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 6th February, 1941.

	Div. Months.	Middle Price 22 Jan. 1941.	Flat Interest Yield.	‡ Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110½	3 12 5	3 3 1
Consols 2½%	JAJO	77¼	3 4 6	—
War Loan 3% 1955–59	AO	101	2 19 5	2 18 2
War Loan 3½% 1952 or after	JD	103¼	3 7 8	3 3 0
Funding 4% Loan 1960–90	MN	114	3 10 2	3 0 7
Funding 3% Loan 1959–69	AO	99½	3 0 4	3 0 6
Funding 2½% Loan 1952–57	JD	98½	2 15 10	2 17 4
Funding 2½% Loan 1956–61	AO	92½	2 14 1	3 0 1
Victory 4% Loan Average life 20 years	MS	112½	3 11 3	3 3 4
Conversion 5% Loan 1944–64	MN	108½	4 12 6	2 9 10
Conversion 3½% Loan 1961 or after	AO	104⅛	3 7 0	3 3 10
Conversion 3% Loan 1948–53	MS	103	2 18 3	2 9 9
Conversion 2½% Loan 1944–49	AO	100	2 10 0	2 10 0
National Defence Loan 3% 1954–58	JJ	101¼	2 19 3	2 17 9
Local Loans 3% Stock 1912 or after	JAJO	90	3 6 8	—
Bank Stock	AO	340½	3 10 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	90¼	3 6 4	—
India 4½% 1950–55	MN	109½	4 2 2	3 6 3
India 3½% 1931 or after	JAJO	97	3 12 2	—
India 3% 1948 or after	JAJO	84	3 11 5	—
Sudan 4½% 1939–73 Average life 18½ years	FA	109	4 2 7	3 16 3
Sudan 4% 1974 Red. in part after 1950	MN	107	3 14 9	3 3 5
Tanganyika 4% Guaranteed 1951–71	FA	109	3 13 5	2 18 11
Lon. Elec. T. F. Corpn. 2½% 1950–55	FA	93	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	105	3 16 2	3 10 11
Australia (Commonwealth) 3½% 1964–74	JJ	94	3 9 2	3 11 3
Australia (Commonwealth) 3% 1955–58	AO	94	3 3 10	3 9 1
*Canada 4% 1953–58	MS	112	3 11 5	2 17 7
New South Wales 3½% 1930–50	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945	AO	99	3 0 7	3 5 6
Nigeria 4% 1963	AO	107	3 14 9	3 11 1
Queensland 3½% 1950–70	JJ	100	3 10 0	3 10 0
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 0
Victoria 3½% 1929–49	AO	101	3 9 4	—
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	83½	3 11 10	—
Croydon 3% 1940–60	AO	92½	3 4 10	3 11 1
Leeds 3½% 1958–62	JJ	96	3 7 8	3 10 5
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	85½	3 10 2	—
*London County 3½% 1954–59	FA	102	3 8 8	3 6 4
Manchester 3% 1941 or after	FA	83	3 12 3	—
Manchester 3% 1958–63	AO	95	3 3 2	3 6 2
Metropolitan Consolidated 2½% 1920–49	MJSD	99	2 10 6	2 12 6
Met. Water Board 3% "A" 1963–2003	AO	86½	3 9 4	3 10 9
Do. do. 3% "B" 1934–2003	MS	89	3 7 5	3 8 6
Do. do. 3% "E" 1953–73	JJ	91	3 5 11	3 9 6
Middlesex County Council 3% 1961–66	MS	93	3 4 6	3 8 4
*Middlesex County Council 4½% 1950–70	MN	105	4 5 9	3 16 8
Nottingham 3% Irredeemable	MN	82	3 13 2	—
Sheffield Corporation 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	105½	3 15 10	—
Great Western Rly. 4½% Debenture	JJ	113½	3 19 4	—
Great Western Rly. 5% Debenture	JJ	122½	4 1 8	—
Great Western Rly. 5% Rent Charge	FA	118	4 4 9	—
Great Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Great Western Rly. 5% Preference	MA	88	5 13 8	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.